

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD J. SANDERS, JOSEPH A. MLINAR,
DENISE M.B. MURIE, JESSE P. SORENSON
And KENNETH J. WAGNER

Appeal 2006-1924
Application 09/954,506
Technology Center 1700

Decided: September 29, 2006

Before KIMLIN, KRATZ, and LINCK, *Administrative Patent Judges*.
KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the Examiner's final rejection of claims 1-32 and 34-49, the only claims that remain pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 134.

Appellants' invention is directed to a method of manufacturing a garment wherein a base web or garment subassembly, including webs, is moved in a first direction and a fastener material in a second direction. The

fastener material is cut to form a plurality of fastener members, the fastener members are rotated about an axis substantially perpendicular to said second direction and the fasteners are applied to a web. Claims 1 and 32 are illustrative and reproduced below:

1. A method for manufacturing a refastenable absorbent garment comprising:

moving a continuous absorbent garment subassembly in a first machine direction, wherein said continuous absorbent garment subassembly comprises a continuous front body panel web having a terminal crotch edge and a terminal waist edge, a continuous rear body panel web having a terminal crotch edge and a terminal waist edge, wherein said terminal crotch edges of said continuous front and rear body panels are spaced apart in a cross-direction, and a plurality of discrete crotch portions spaced along said first machine direction and extending between said continuous front and rear body panel webs and across said spaced apart terminal crotch edges of said continuous front and rear body panels, wherein said crotch portions each have opposite terminal ends spaced in said cross direction and spaced from said terminal waist edges of said continuous front and rear body panels;

moving a fastener material in a second machine direction;
cutting said fastener material to define a plurality of fastener members;

successively rotating each of said fastener members about an axis substantially perpendicular to said second machine direction; and

applying each of said rotated fastener members to one of said continuous front and rear body panel webs.

32. A method for manufacturing a refastenable absorbent garment comprising:

moving a base web in a first machine direction;
moving at least two strips of fastener material in a second machine direction, wherein said moving at least said two strips of said fastener material comprises moving a web of fastener material along said second machine direction, cutting said web of fastener material along said second machine direction and thereby forming said at least said two strips of said fastener material;

cutting said at least two strips of fastener material to define at least a first and second stream of a plurality of fastener members; successively rotating each of said fastener members about an axis substantially perpendicular to said second machine direction in each of said first and second streams; and applying each of said rotated fastener members in each of said first and second streams to said base web, wherein said fastener members in said first stream are sequentially located relative to said fastener members in said second stream on said base web in an alternating relationship along said first machine direction.

The Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Wada ¹	JP 03176053 A	Jul. 31, 1981
Pohjola	US 5,224,405	Jul. 6, 1993
Roessler	US 5,399,219	Mar. 21, 1995
Datta	US 5,476,702 A	Dec. 19, 1995
Rajala	US 5,556,504	Sep. 17, 1996
Fernfors	GB 2,308,290 A	June 25, 1997
Justmann	US 5,900,101	May 4, 1999
Widlund	EP 0,755,238 B1	Aug. 25, 1999

Claims 1, 2, 7-12, and 14-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fernfors (GB 2308290) in view of Wada (JP 03176053), Datta, Pohjola, and Rajala. Claims 2 and 7-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fernfors in view of Wada (JP 03176053), Datta, Pohjola, Rajala, and Widlund. Claims 3-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fernfors in view of Wada (JP 03176053), Datta, Pohjola, Rajala, optionally Widlund, further taken with Roessler and Justmann. Claims 32, 34-40, 48, and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rajala

¹ The Examiner refers to this reference as Takao.

taken with Roessler and Justmann. Claims 41 and 45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rajala taken with Roessler, Justmann and Widlund. Claims 32, 41-47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fernfors in view of Widlund, and Rajala, further taken with Roessler and Justmann.

OPINION

We have reviewed Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been *prima facie* obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. In this regard, Appellants have not persuaded us of any reversible error in the Examiner's stated rejections. Accordingly, we will sustain the Examiner's rejections for substantially the reasons expressed in the Answer and as further discussed below.

Concerning the Examiner's rejection of claims 1, 2, 7-12, and 14-31 under 35 U.S.C. § 103(a) as being unpatentable over Fernfors in view of Wada, Datta, Pohjola, and Rajala, we note that Appellants argue the claims together as a group with the exception of claim 15. We select claim 1 as representative of rejected claims 1, 2, 7-12, 14, and 16-31.

With regard to representative claim 1, Appellants (Reply Br. 2) do not argue that the combination of the applied references set forth by the Examiner would not result in a process corresponding to the claimed process. Moreover, Appellants do not dispute that the Examiner's proposed modification of Fernfors, based on the teachings of Wada, would have been suggested to one of ordinary skill in the art at the time of the invention. *See* Answer 7 and the Briefs, in their entirety.

In order to establish that a garment manufacturing method corresponding to the method of representative claim 1 would have been obvious, the Examiner notes another modification of the manufacturing method of Fernfors that would have been suggested to one of ordinary skill in the art in the Examiner's opinion. In particular, Fernfors discloses an in line method for manufacturing reclosable absorbent garments, such as pants, and teaches that strips of releasable material are attached, such as by adhesive or ultrasonic welding, to the garment web at first and second edges thereof. However, Fernfors furnishes little detail as to how these releasable strips are supplied and transferred to the moving web during the garment manufacturing process. *See, e.g.,* the abstract and Fig. 1, elements 5, 8, 9, 13, and 14 of Fernfors. Concerning these claim features, the Examiner (Answer 8-9) reasonably maintains that, as evidenced by the garment making teachings of Datta, Pohjola, and/or Rajala, it would have been obvious to one of ordinary skill in the art at the time of the invention to employ the conventional method of (1) moving fastener material in a direction that differs from the in line garment/web moving direction, (2) providing for the cutting of the fastener material to form the fastener members (releasable strips), (3) rotating the fastener members in a manner as here claimed at, and (4) applying the rotated fastener members to the garment/web.

With regard to the latter proposed modification of Fernfors, Appellants disagree with the Examiner's obviousness position. Appellants maintain that one of ordinary skill in the art would not have been led to employ the teachings of Datta, Pohjola and/or Rajala, as relied upon by the Examiner, in modifying the method of Fernfors.

In particular, Appellants (Br. 8) urge that the fastener material supply and transfer method and equipment taught by each of Datta, Pohjola and Rajala require a flat material member being formed and transferred onto the garment. Moreover, Appellants (Br. 8) opine that the surplus material-containing fastener strips allegedly required by Fernfors are not compatible with the fastener material transfer techniques employed in Datta, Pohjola, and/or Rajala. In this regard, Appellants allege that the fastener material handling techniques of the latter references are designed for handling flat members, not fastener members having surplus material as used by Fernfors.

Even if we could agree that such attorney argument was persuasive as to the incapability of one of ordinary skill in the art to use the fastener member transfer and handling techniques of Datta, Pohjola, and Rajala to transfer a surplus material containing fastener strip as taught by Fernfors, such argument would not be persuasive of reversible error in the Examiner's obviousness position for a more fundamental reason. This is because Fernfors (p. 11, *ll.* 9-15) teaches that flat fastener strips may be employed as an alternative to employing surplus material containing strips. Thus, the premise that underlies Appellants' contentions in opposition to the Examiner's proposed modification of Fernfors is unsound. Consequently, Appellants' assertion of reversible error in the Examiner's rejection based on the premise that Fernfors requires a surplus material containing fastener strip is not persuasive.

Accordingly, for the reasons set forth above and in the Answer, we agree with the Examiner that the applied references' teachings would have rendered the subject matter of representative claim 1 obvious within the meaning of § 103(a).

As for Appellants' separate arguments with respect to dependent claim 15 (Br. 10-11), those arguments are directed at the Examiner's alternative position of considering strip 5 of Fernfors as a strip that corresponds to the claimed refastenable fastener members of claim 15. However, for the reasons set forth above, Fernfors teaches/suggests an alternative embodiment wherein a releasable fastening member can be employed that lies flat and does not include surplus material. Thus, Appellants' arguments concerning dependent claim 15 are unpersuasive of reversible error.

On this record, we shall affirm the Examiner's obviousness rejection of claims 1, 2, 7-12, and 14-31.

The Examiner has separately rejected dependent claims 2 and 7-14 under § 103(a) as obvious over the combination of references applied in rejecting claim 1, further in view of Widlund. Also, the Examiner has separately rejected claims 3-6 under § 103(a) as obvious over the same combination of references employed in rejection claim 1, further in view of Roessler and Justmann with or without Widlund. As pointed out in footnote 1 (Br. 7), Appellants' only argument against the separate rejections of these dependent claims rests on their patentability argument for claim 1. It follows that we will also sustain the separate obviousness rejection of claims 2 and 7-14, and the separate obviousness rejection of claims 3-6, as presented in the final Office action mailed April 06, 2005.²

² The Examiner (Answer 3) has treated the latter two rejections (while being maintained by the Examiner), as well as an obviousness rejection pertaining to other dependent claims, as not being before us for review. This is apparently because Appellants failed to mention these rejections in the

Concerning the Examiner's obviousness rejection of claims 32, 34-41, 45, 48 and 49 over Rajala in view of Roessler and Justmann, Appellants argue the claims together as a group. Thus, we select claim 32 as representative of these commonly rejected claims. Appellants do not specifically argue that the Examiner's proposed combination of the references' teachings, if made, would not result in a process corresponding to the representative claim 32 process. Rather, Appellants contend that there is no suggestion to combine the applied references. We disagree.

The Examiner relies on Rajala for teaching/suggesting a method for manufacturing a refastenable absorbent garment wherein: (1) a base web is moved in a first machine direction; (2) two strips of a web (fastener material) are moved in a second direction; (3) the strips of fastener are cut to form streams of first and second discrete parts, such as fastener members; (4) the discrete parts (fastener members) of the first and second streams are rotated in a manner corresponding to that recited in representative claim 32; and (5) the rotated discrete parts (fastener members) are applied to the base

corresponding "Grounds of Rejection to be Reviewed on Appeal" section of their Brief. Given the presentations in footnotes 1 and 3 of the Brief; however, there is an obvious inconsistency here. In light of the aforementioned footnotes in the Brief, we determine that Appellants have presented all grounds of rejection for our review, albeit on the basis of arguments made for the patentability of the rejected independent claim(s) from which they depend. Appellants are cautioned to include all contested grounds of rejection (including those grounds only contested on the basis of a separately rejected independent claim) in the "Grounds of Rejection to be Reviewed on Appeal" section of any subsequent Briefs filed in other appeals. Otherwise, unlisted grounds of rejection may be viewed as not being before the Board with the consequences that could be associated with such an omission.

web such that the discrete parts (fastener members) from the first and second streams are located on the base web in an alternating relationship along the first machine direction. *See* Answer 11-12 and the corresponding portions of Rajala referred to by the Examiner.

Rajala, according to the Examiner (Answer 20), does not specifically disclose how the separate strips of fastener (webs) are obtained. According to the Examiner (Answer 12 and 20), it would have been obvious for one of ordinary skill in the art at the time of the invention to obtain the two webs or streams of fastener material of Rajala by furnishing a single stream or web, which is cut or split into the two streams of fastener as taught by Justmann or Roessler to furnish the requisite plurality of streams of fastener material. *See*, for example, col. 19, l. 50 through col. 20, l. 14 of Roessler and col. 14, ll. 25-45 of Justmann. We agree with the examine that one of ordinary skill in the art would have been led to employ such a conventional technique as taught by Roessler and/or Justmann so as to obtain the two webs/streams of fastener material desired by Rajala.

Appellants argue that Justmann and/or Roessler do not rotate fasteners before applying them to a base web, as here claimed. However, as correctly noted by the Examiner (Answer 20), the rejection is over the combined teachings of Rajala together with Justmann and/or Roessler. In this regard, we note that Appellants (Reply Br. 6) acknowledge that Rajala is concerned with supplying fasteners, as are Justmann and Roessler. Moreover, we agree with the Examiner that one of ordinary skill in the art would have been led to obtain the two webs/streams of fastener material of Rajala using conventional techniques utilized in the manufacture of garments employing fasteners, such as the web splitting techniques of Justmann and/or Roessler.

After all, one of ordinary skill in the art would have looked to the prior art for conventional techniques for obtaining the multiple webs (136) of Rajala and, in so doing, would have recognized that splitting of a single web as taught by Roessler and/or Justmann would be one such available technique for securing separate streams of fastener material. As for the fastener orientation argument, we note that Rajala teaches/suggests a fastener supply method involving rotation of the fastener members, as claimed. In this regard, we note that Appellants (Reply Br 6-7) seemingly limit their arguments to attacking the Examiner's rejection as missing a persuasive rationale for combining the applied references' teachings and do not persuasively argue that all of the claimed limitations would not have been taught by the combined references' teachings. However, Appellants' arguments concerning the lack of a suggestion to combine the references as advanced by the Examiner are not persuasive for reasons set forth above and in the Answer. Consequently, we shall sustain the Examiner's obviousness rejection of claims 32, 34-40, 48 and 49 over Rajala taken with Roessler and/or Justmann, on this record.

The Examiner has separately rejected claims 41 and 45 under § 103(a) as obvious over the same combination of references employed in rejecting claim 32 (Rajala taken with Roessler and/or Justmann) further in view of Widlund. As pointed out in footnote 3 (Br. 11), Appellants' only argument against this separate rejection of these dependent claims rests on their patentability argument for claim 32. It follows that, on this record, we will also sustain the separate obviousness rejection of claims 41 and 45, as presented in the final Office action mailed April 06, 2005.

Concerning the Examiner's obviousness rejection of claims 32 and 41-47 over Fernfors in view of Widlund, Rajala, Roessler, and/or Justmann, we note that Appellants argue the claims as a group. Thus, we select claim 32 as the representative claim for deciding the propriety of this rejection.

At the outset, for the reasons advanced above and in the Answer, we find that the combination of Rajala with Justmann and/or Roessler is sufficient to establish the obviousness of the subject matter of representative claim 32. Moreover, for the reasons stated by the Examiner (Answer 13-16), we agree that one of ordinary skill in the art would have been led to the subject matter of representative claim 32 in considering Fernfors together with Widlund in light of the aforementioned three reference combination.

Appellants refer to their arguments made against the other rejections presented by the Examiner (Br. 13). For the reasons set forth above and in the Answer, we do not find those arguments persuasive. Appellants (Br. 13) further maintain that Widlund is not combinable with Fernfors because Fernfors teaches against a two-fastener embodiment, as disclosed in Widlund. Here, we agree with the Examiner's rebuttal (Answer 21-22) in so far as the use of one fastener with two fastener areas would have been recognized by one of ordinary skill in the art as an equivalent or an obvious alternative to the use of two separate fasteners for most applications. As for Appellants' argument that Fernfors requires bridging the gap between separable garments with a fastener material, Fernfors teaches that a strip (5) can bridge the gap. Thus, separate fasteners can be employed as an alternative to the single fastener (8) while the gap is bridged by the strip (5) that is attached to the garments.

In any event, we note that Fernfors does employ separate fasteners (8) and (13), which require two strips of fasteners. See drawing Figure 1 of Fernfors. Thus, Appellants' arguments are not persuasive.

Consequently, on this record, we also sustain the Examiner's obviousness rejection of claims 32 and 41-47 over Fernfors in view of Widlund, Rajala, Roessler, and/or Justmann.

CONCLUSION

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

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